

FILED
IN THE CIRCUIT COURT OF LAUDERDALE COUNTY, MISSISSIPPI

KARISSA LYONS HILL

PETITIONER

VS.

2015 JUN 11 AM 9:34
Donna Gise Johnson
CIRCUIT CLERK

CAUSE NO. 15-CV-050(W)

443-11

STATE OF MISSISSIPPI

RESPONDENT

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court on a Motion for Post-Conviction Collateral Relief filed by Petitioner, Karissa Lyons Hill, and the Court having reviewed Petitioner's Motion, along with the applicable law, does hereby find the following:

I.

In April of 2011, Petitioner was indicted on two felony counts by the Lauderdale County Grand Jury. In Count I, Petitioner was indicted for Sale of Cocaine within 1500 Feet of a Public Park, in violation of Mississippi Code Annotated § 41-29-139 and § 41-29-142. In Count II, Petitioner was indicted for Child Endangerment in violation of Miss. Code Ann. § 97-5-39(2)(b)(i). On April 21, 2014, Petitioner pleaded guilty to Count I, and was adjudicated guilty of Sale of .3 grams of Cocaine in violation of Miss. Code Ann. § 41-29-139. Petitioner was sentenced to fifteen (15) years in the custody of the Mississippi Department of Corrections (hereinafter "MDOC"), ten (10) years initially suspended, five (5) years to serve initially followed by five (5) on post-release supervision, plus fines, fees, and assessments. At sentencing, Petitioner was given three (3) days jail credit and has been in the custody of MDOC since April 21, 2014. Also, on April 21, 2014, an Order of Nolle Prosequi was entered on Count II of Petitioner's indictment, pursuant to the plea agreement reached with the State.

II.

On April 28, 2015, Petitioner filed her Motion for Post-Conviction Collateral Relief with this Court. The Court finds that Petitioner's claim regarding her parole eligibility is properly filed in this Court as a petition for Post-Conviction Relief. See *Horton v. King*, 148 So.3d 683, 686 (Miss. Ct. App.

EXHIBIT

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2014); *McGovern v. MDOC*, 89 So.3d 69, 71 (Miss. Ct. App. 2011); and *Lattimore v. Sparkman*, 858 So.2d 936, 938 (Miss. Ct. App. 2003). The Court properly has jurisdiction in this matter.

In her Motion, Petitioner argues that at the time she was sentenced by the Court, MDOC maintained a policy that inmates serving sentences for the sale of controlled substances in violation of § 41-29-139(a) were eligible for parole after serving twenty-five percent (25%) of their respective sentences. Petitioner further states that in August or September of 2014, MDOC changed its policy and removed the parole eligibility of several hundred inmates who had been convicted of selling or manufacturing a controlled substance, in violation of § 41-29-139(a), between June 30, 1995 and July 1, 2014 – including Petitioner, Karissa Lyons Hill's parole eligibility. Justification for Petitioner's parole eligibility removal was as follows,

Those offenders convicted of sale or manufacture of a controlled substance prior to July 1, 2014 are considered violent offenders and ineligible for parole pursuant to Miss. Code Ann. 47-7-3(1)(f). Recent appellate precedent has also dictated the same. See *McGovern v. MDOC*, 89 So.3d 69 (Miss. Ct. App. 2011). The only exception is for those who sold marijuana subject to certain amounts.

1104 offenders' files were audited to comply with the law and appellate precedent. 403 offenders had their parole eligibility dates removed as a result of this audit.

MDOC Policy Explanation, attached as Exhibit "A". The Court finds that this particular justification for denying Petitioner parole eligibility is incorrect.

III.

In the present Motion, the pertinent statutes were all revised and amended in 2014. As the law currently stands, the criteria for determining the parole eligibility of an inmate convicted of a crime between June 30, 1995 and July 1, 2014 is found in Miss. Code Ann. § 47-7-3. That statute provides that:

No person shall be eligible for parole who is convicted or whose suspended sentence is revoked after June 30, 1995, except that an offender convicted of only non-violent crimes after June 30, 1995, may be eligible for parole if the offender meets the requirements in subsection (1) and this paragraph[.] ... For the purposes of this paragraph, "non-violent" crime means a felony other than... the sale or manufacture of a controlled substance under the Uniform Controlled Substances Law...

Miss. Code Ann. § 47-7-3(1)(f). However, in the very next sentence, the statute now also specifically provides that, “[a]n offender convicted of a violation under Section 41-29-139(a), not exceeding the amounts specified under Section 41-29-139(b), may be eligible for parole.” *Id.* It is undisputed that Petitioner was convicted and sentenced under § 41-29-139(a) for Sale of .3 grams of Cocaine in Lauderdale County Circuit Court on April 21, 2014. The law as it applies to Petitioner changed somewhat in July 2014.

The Court notes that effective July 1, 2014, the provisions of § 41-29-139(b) provide a weight-based sentencing structure for all Schedule I, II, III, IV, and V controlled substances, and not merely Marijuana. With respect to cocaine, § 41-29-139(b)(1)(A) now provides for the punishment on the sale of “[l]ess than two grams or ten (10) dosage units.” The Court finds that the weight involved in Petitioner’s 2014 Cocaine conviction (.3 grams), is less than 2 grams of a Schedule II Controlled Substance; and as a result, Petitioner falls within the range provided for in subsection (b)(1)(A). Therefore, based on the plain language of Miss. Code Ann. §§ 47-7-3 and 41-29-139, as revised in 2014, and joint application of these provisions to Petitioner’s case, the Court finds that Petitioner’s 2014 Lauderdale County Sale of Cocaine alone should not prevent or exclude the Petitioner from parole eligibility. The Court agrees with Petitioner that with the changes to Miss. Code Ann. §41-29-139(b), which now provides weight-based limits and sentences for drugs *other than marijuana*, the *McGovern* case is no longer applicable in Petitioner’s case. (Emphasis added).

While the Court finds that Petitioner’s Sale of Cocaine conviction alone should not exclude Petitioner from parole eligibility under the statutes as amended and revised in 2014, the Court will not affirmatively state or declare that Petitioner is actually eligible for parole. The provisions which have been analyzed in this Memorandum Opinion and Order are still discretionary in nature. For example, Miss. Code Ann. § 47-7-3(1)(f) states that if an offender is convicted of Sale under Miss. Code Ann. § 41-29-139(a), and the quantity of drugs is less than the amounts provided for in Miss. Code Ann. § 41-29-139(b), as amended in 2014 to include drugs like Cocaine, than the Petitioner

may be eligible for parole. (Emphasis added). There are numerous other requirements, qualifications, and considerations that must be made to determine an individual's absolute parole eligibility, and this Court will not address any of those matters in its analysis here. The Court finds that Petitioner may be eligible for parole and should not be denied this opportunity based on the legal authority cited by MDOC in Exhibit "A" and/or Exhibit "B", which is an illustrative Administrative Remedy Program First Step Response Form. This includes the citation to the 2011 Mississippi Court of Appeals *McGovern* case, which this Court sees as currently inapplicable here. Whether Petitioner is completely eligible for parole is not a determination to be made by this Court.

IT IS THEREFORE ORDERED AND ADJUDGED, that Petitioner's Motion for Post-Conviction Relief, and the argument made therein, is well-taken and is hereby **GRANTED IN PART**. The Court finds that there is nothing about Petitioner's 2014 Lauderdale County conviction for Sale of .3 grams of Cocaine alone that makes her ineligible for a parole date. To deny Petitioner parole eligibility under the legal authority cited by MDOC would not be valid under the law as it currently stands.

The Staff Attorney shall mail a copy of this Memorandum Opinion and Order to Hon. Jacob Howard, counsel for Petitioner, Petitioner Karissa Lyons-Hill, and Hon. Bilbo Mitchell, District Attorney.

SO ORDERED AND ADJUDGED, this the 11th day of June, 2015.


LESTER F. WILLIAMSON, JR.
CIRCUIT JUDGE

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Those offenders convicted of sale or manufacture of a controlled substance prior to July 1, 2014 are considered violent offenders and ineligible for parole pursuant to Miss. Code Ann. 47-7-3(1)(f). Recent appellate precedent has also dictated the same. See *McGovern v. MDOC*, 89 So. 3d 69 (Miss. Ct. App. 2011). The only exception is for those who sold marijuana subject to certain amounts.

1104 offenders' files were audited to comply with the law and appellate precedent. 403 offenders had their parole eligibility dates removed as a result of this audit.

Attached is the list of offenders who had parole eligibility dates removed. Feel free to share this with the appropriate staff.

Thanks

1104 Audited
- 403
701 Sch. I
403 Sch. II

This is what the case manager gave us to the reason why my parole date was remove. This was email from Rankin Co. CMCF. Please turn over is Cases sentence under 41-29-139(b) sell of cocaine

① *McGovern v. MDOC*, 89 So. 3d 69 (Miss. Ct. App. 2011),
Also

② *Sam Turner v. State*, No. 2013-CP-00445 -COA
Decided: July 15, 2014



MISSISSIPPI DEPARTMENT OF CORRECTIONS
Administrative Remedy Program

ARP-2

NUMBER MSP - 14 - 3295

FIRST STEP RESPONSE FORM

Type or use ball point pen. You must return your response to the Legal Claims Adjudicator within 30 days of the date the request was initiated.

TO: Jelly McRaney # 102525 General Counsel
Inmate's Name and DOB# Housing Unit

FROM: _____
Person to whom 1st Step is Directed Title/Location

If you are not satisfied with this response, you may go to Step Two by checking below and forwarding to the ARP Legal Claims Adjudicator within 5 days of your receipt of this decision.

MS Code 47-7-3(1)(g) prohibits parole eligibility for offenders convicted of violent crimes. Sale of a controlled substance is considered violent per the above statute code.

Therefore your 2012 conviction for sale of cocaine makes you ineligible for parole.

The new law (House Bill 585) is not retroactive and only applies to persons convicted on or after July 1, 2014.

Dorothy Johnson 1-15-2015
Signature Date

() I am not satisfied with this response and wish to proceed to Step Two.
REASON:

() I wish to cancel this complaint. You do not have to sign this form. The Legal Claims Adjudicator will cancel complaint.

Inmate's Signature

DOC#



Date

Legal Claims Adjudicator - ORIGINAL